

case. The onus on the prosecution is to establish that the respondent was carrying on his motor cycle goods, that is, goods within the meaning of section 2 of the Ordinance. Whether the goods carried were for the purpose of the respondent's trade or business is a matter of inference from the circumstances of the case such as the nature of the respondent's business and the kind of goods carried. (See the observations of Buhagiar J. in the case of *Khoo Teck Yam v. Public Prosecutor* ⁽¹⁾). In this case there is evidence that the respondent is a sundry goods shopkeeper and on the day in question he was carrying about 50 katties of various commodities in his basket. There is therefore in my opinion sufficient material for the inference that these goods were in connection with his trade or business.

It is well to bear in mind the object of the relevant sections of this Ordinance which is, as stated by Rigby J. in the case of *Chua Lai Seng v. Public Prosecutor* ⁽²⁾, "to increase the revenue of the country by making it incumbent upon persons who wish to use their vehicles for the carriage of goods to pay a higher licensing fee for such a purpose and, by the same token, to protect from unfair competition the legitimate interests of *bona fide* carriers of goods for reward or hire who have paid the higher licensing fee required for such a purpose".

The appeal is allowed. The order of acquittal is set aside and the case is to be sent back to the Magistrate's Court for the defence to be called.

Appeal allowed.

WONG PENG YUEN v. SENANAYAKE

[O.C.J. (Wee Chong Jin J.) February 3, 1962]

[Singapore — Suit No. 1236 of 1959]

Partnership — Share brokers — Payment of money in consideration of being made partner — Subsequent holding out as partner — No powers in control or management of business — Losses incurred by remiser — Dissolution of partnership — Claim of money paid — Whether recoverable — Partnership Act, 1890, s.24.

The defendant and one Goh were the partners of a firm of stock and share brokers. On March 26, 1959 they executed a partnership deed by which the said Goh transferred \$14,000 worth of shares in the capital of the said firm to each of his two infant children. On April 3, 1959 the said partners executed a partnership deed by which one Tan became a partner of the said firm. On April 30, 1959 the plaintiff paid the defendant the sum of \$20,000 in consideration that he be made one of the partners of the said firm. The plaintiff then thought and acted as if he was a partner although he never had anything to do with the management or control of the business of the said firm. Meanwhile a remiser of the firm speculated on shares and owed the firm approximately \$91,000. Subsequently on notice being given for the dissolution of the firm on July 3, 1959, the plaintiff in order to avoid the burden of sharing the considerable losses suffered by the remiser claimed the return of \$20,000 on the ground that the plaintiff was never a partner of the firm because (a) when the partnership was dissolved the Malayan Sharebrokers Association had never granted permission for the admission of the plaintiff as a partner, and (b) that Tan and the two infants had never consented to his admission as a partner.

A Held: (1) the first contention failed because although the firm was a member of the Association, the plaintiff was not contracting to become a member of the Association but the firm;

(2) Tan's consent was given subsequent to April 30, 1959 and further consent of the two infant children were not necessary because the deed of the March 26, 1959 was merely an assignment by Goh to his infant children a share in the partnership and this did not confer on them the rights of a partner in the said firm.

B ACTION.

K. Gould (Robert S. A. Hsieh with him) for the plaintiff.

L. A. J. Smith for the defendant.

C Wee Chong Jin J.: This action is a quasi-contractual one in that the plaintiff is claiming the return of \$20,000 being moneys had and received by the defendant to the use of the plaintiff. The particulars set out in the specially endorsed Writ are as follows:—

D "A few days prior to the 30th April, 1959 the plaintiff entered into negotiations with the defendant with the object of becoming a partner in the firm of 'Sena & Goh' of which the defendant was himself a partner at all material times. As a step in the said negotiations the plaintiff on the 30th April, 1959 by the direction of the defendant paid to the firm of Sena & Goh the sum of \$20,000 and the said Sena & Goh received the said sum of \$20,000 as agents for the defendant. The said sum of \$20,000 was paid to the defendant in consideration of the plaintiff being made a partner with the then existing partners of the said firm of Sena & Goh. In fact the plaintiff was never made a partner and at no time became a partner in the said Sena & Goh. On or about the 30th June, 1959 the plaintiff verbally informed the defendant that he, the plaintiff, did not wish to become a partner and that he did not wish to continue negotiations for a partnership further. The plaintiff has demanded the return of the said sum of \$20,000 but the defendant has failed to pay the same."

F The firm of Sena & Goh came into existence on the 18th October, 1955 when on that date the defendant and one Goh Teck Tiong entered into a partnership agreement by deed to become partners in the business of stock and share brokers under the name and style of "Sena & Goh" at No. 22 Market Street, Singapore with a capital of \$100,000, of which the defendant was to contribute \$51,000 and Goh Teck Tiong was to contribute \$49,000. At that date and at the date of the institution of the action there was an association known as the Malayan Sharebrokers' Association consisting of approximately 20 members which had as one of its principal objects the regulation and control of methods by which the business of stock and share brokers in Malaya (comprising Singapore and the Federation of Malaya) is to be carried on.

H By Rule 4(1) any individual carrying on business alone as a stock and share broker or any number of individuals carrying on business together in partnership as stock and share brokers shall be eligible as a member and a firm shall become a member in its conventional name.

I By Rule 4(5) no member shall carry on business in stocks, shares or bonds with any stock, share or bond broker in Malaya who is not a member of the Association.

By Rule 11 every member shall conform to and be bound by the Rules and By-laws of the Association for the time being in force, and the interpretation and construction thereof by the committee, and every member shall, upon being requested by the secretaries so to do sign an agreement to conform to and be bound by such Rules and By-laws; and the interpretation and construction thereof above mentioned, and to comply with, abide by and carry out every notice, summons, decision and direction of the committee.

At the material dates the firm of Sena & Goh was a member of the Association. On the 19th August, 1958 the defendant and Goh Teck Tiong, the then two partners of Sena & Goh each signed a document which is in the following terms:—

"I, Partner of Sena & Goh, have carefully perused the Rules, By-Laws and Code of Conduct of the Association and undertake to adhere to the letter and spirit of these regulations.

I also agree that in the event of a specific non-frivolous allegation of a breach of these regulations or of insolvency being made against my Firm, the Committee may direct the Secretaries (or some other firm of Chartered Accountants) to examine the Firm's records to establish the truth or otherwise of such specific allegation.

I also declare that my interest in Sena & Goh is held entirely in my own right and that no other person has any right, interest or title therein. If at any time I should wish to alter this position, I shall apply formally to the Committee for permission to do so.

I understand that from time to time as necessity arises the Committee may introduce further clauses to the Code of Conduct."

On the 26th March, 1959 the defendant and Goh Teck Tiong executed a so-called Partnership Deed whereby Goh Teck Tiong with the consent of the defendant assigned and transferred \$14,000 of his share in the capital in the firm to his infant son, Goh Ewe Hock "to the intent that the said Goh Ewe Hock, an infant shall on the date of these presents, become a partner of Sena & Goh to the extent of \$14,000 out of the total capital of \$100,000". By the same Deed Goh Teck Tiong similarly assigned \$14,000 of his share in the capital of the firm to his infant daughter, Sylvia Goh Suan Poh. The 2 infant children were not parties to this Deed nor did they execute the same. They were then respectively aged approximately 11 and 8 years.

On the 3rd April, 1959 the defendant, Goh Teck Tiong and one Tan Eng Liat executed a Partnership Deed expressed to be supplemental to the said Partnership Deed dated 18th October, 1955 and to the said Partnership Deed dated 26th March, 1959 whereby Tan Eng Liat became a partner of the firm of Sena & Goh by purchasing \$10,000 out of the remaining share of Goh Teck Tiong in the capital of the firm. The said 2 infant children of Goh Teck Tiong were not parties to this latter Partnership Deed nor did they execute the same. It is conceded by the defendant at the trial that after this Deed came into existence the defendant, Goh Teck Tiong,

A Tan Eng Liat and the 2 infant children of Goh Teck Tiong all signed a form as prescribed by the Registration of Business Names Ordinance (Chapter 171) which was filed with the Registrar of Business Names setting out the changes in the constitution of the firm.

B On the 30th April, 1959 after some prior negotiation with the defendant the plaintiff agreed to buy \$5,000 out of the defendants' share of \$51,000 in the capital of the firm and on the same day the plaintiff paid to the defendant \$20,000 by way of a cheque made out, at the request of the defendant, in favour of the firm.

C Before this transaction, but after Tan Eng Liat became a partner on the 3rd April, 1959, another individual in the person of Madam Annie Yeo had come into the scene. On the evidence it would appear that she had similarly bought from the defendant part of his share in the capital of the firm. It is common ground that neither the plaintiff nor the said Madam Annie Yeo executed any partnership agreement nor were their names registered in the appropriate form with the Registrar of Business Names as partners of the firm.

The plaintiff's case is that the payment made by him of \$20,000 was made in consideration of his being made a partner of the firm and that in fact he was never made a partner and at no time became a partner of the firm. His evidence is that before the 30th April, 1959 he was a client of the firm and had been so since 1956. As a result of persuasion by some employees of the firm he approached the defendant sometime in the latter part of April 1959 and offered to buy from the defendant a share in the firm. The defendant agreed and offered the plaintiff \$10,000 of his share in the capital of the firm at the price of \$40,000. Subsequently on the 30th April, 1959 the plaintiff again saw the defendant and offered to purchase from him \$5,000 of his share in the capital of the firm which offer was accepted. The plaintiff then paid the defendant \$20,000. When he made this payment he had never been shown the firm's books.

According to the plaintiff, after this date he was never introduced to the staff of the firm as having become a partner, he never had anything to do with the management or control of the business of the firm, nor was he ever consulted in any policy matter concerning the firm. He admits, however, to having attended two meetings, one on the 17th June, 1959 and the other on the 29th June, 1959. At the first meeting the defendant, Goh Teck Tiong, Tan Eng Liat and a Mr. Sivam, the accountant of the firm were present and this meeting lasted for about one hour. His evidence is that at that stage he did not know the name of Tan Eng Liat and thought Tan Eng Liat's presence there was because he was a good friend of Goh Teck Tiong and although the meeting lasted about an hour Tan Eng Liat said nothing. The meeting was adjourned when Madam Annie Yeo failed to turn

up. In cross-examination he admits the meeting was probably called to discuss the financial position of the firm and that it was to discuss the position of Tan Sin Seng, a remiser of the firm, who had speculated on shares on his own account and was then owing the firm as a result of these speculative transactions a considerable sum of money, namely approximately \$91,000. He further admits that Tan Eng Liat was present because the matters to be discussed also concerned Tan Eng Liat and that his own presence was because those matters also concerned him as he had already paid the \$20,000.

At the meeting of the 27th June which was called by Madam Annie Yeo, the defendant, Goh Teck Tiong, Tan Eng Liat, Madam Annie Yeo, the plaintiff, Sivam, the accountant, and Tan Sin Seng, the remiser were present. At this stage, the plaintiff admits having seen the books of the firm and that the meeting was called by Madam Yeo to find out the true position of the firm. This meeting lasted approximately two hours and according to the plaintiff although Tan Eng Liat was again present Tan Eng Liat was again not introduced to him. He only came to know Tan Eng Liat's name and that Tan Eng Liat was a partner after the partnership was dissolved. In cross-examination the plaintiff admits that at this meeting the defendant asked Madam Yeo, Tan Eng Liat and himself to put in more money and that when this request was made by the defendant, he, the plaintiff knew from that request that Tan Eng Liat was a partner and similarly that Madam Yeo was a partner. It also came out in cross-examination that at the second meeting he asked for the return of his \$20,000 because the books of the firm had not been shown to him and the true position of the firm had not been disclosed to him. He further admits that at this meeting he said: "I don't want to be a partner any more."

According to the plaintiff, he and Madam Yeo on the day after the second meeting demanded the return of their money from the defendant.

It is common ground that on the 3rd July, 1959 Tan Eng Liat gave notice of dissolution of the firm.

According to the plaintiff, on the 6th July, 1959 he consulted a solicitor and the advice he obtained was that if he was not a partner the \$20,000 would be returned to him but not if he was a partner. Thereupon, to quote his own words, "Yes, after that advice I decided not to be a partner. There was no suggestion by me prior to the 6th July or by any other person that I was not a partner".

I have set out enough of the plaintiff's evidence which in my opinion points inevitably to only one conclusion, namely that the plaintiff himself thought he was a partner, in fact acted as a partner and that because he had to bear his share of the considerable losses suffered by Tan

A Sin Seng he decided to get out of the bargain he had entered into.

The question remains, however, whether in law the plaintiff became a partner on the 30th April, 1959 and was a partner until the partnership was dissolved on the 3rd July, 1959.

B Counsel for the plaintiff contends that in law he never was a partner for two reasons, first, that when the partnership was in fact dissolved the Malayan Sharebrokers Association had not granted permission for the admission of the plaintiff as partner of the firm and secondly, that three of the partners of the firm, namely Tan Eng Liat, Goh Ewe Hock and Sylvia Goh Cuan Poh had never consented to his admission as a partner.

D The first contention, which was not seriously pressed by counsel of the plaintiff, must clearly fail. It was not the plaintiff's case that it was a condition precedent to his becoming a partner that the permission of the Malayan Sharebrokers Association should first be obtained. His case seemed to be that under the rules of this Association the firm could be expelled if there was a breach of the written undertakings dated 19th August, 1958 given by the defendant and by Goh Teck Tiong. Even if this were so, it does not in my view preclude E the plaintiff from becoming a partner of the firm. The firm was admittedly a member of the Association and the plaintiff was not contracting to become a member of the Association — indeed the Rules preclude an individual partner of a firm being a member — and in fact the firm continued to be a member of this Association F until the partnership was dissolved on the 3rd July, 1959.

G As regards the second contention, on the evidence of Tan Eng Liat who was called as a witness for the plaintiff, I find that although his consent was not obtained before the 30th April, 1959 he subsequently consented to the plaintiff being admitted a partner.

H The position, however, as regards the two infant children of Goh Teck Tiong is more complicated. Partnership is defined by the Partnership Act, 1890, as "the relation which subsists between persons carrying on a business in common with a view to profit". Although this statutory definition does not state from what the relation arises, it has been clearly established before the Act that an agreement, express or implied is the source of the relation. It is therefore a relation resulting from a contract.

I It is clear from the evidence that these two infants were not aware at the time that their father had attempted with the consent of the defendant to admit them as partners into the firm. They were not parties to the so-called Partnership Deed of the 20th March, 1959. This being so there was no contract, express or implied, from which the relation, which is necessary for a partnership between the defendant, Goh Teck Tiong and his two infant children, would

result. In my view this Partnership Deed only amounted to an assignment by Goh Teck Tiong to his two infant children of a share in the partnership and did not confer on them the rights of a partner as against the firm.

In any event if I am wrong in this view and the two infant children became partners of the firm, I am of the opinion that it must be an implied term of the new partnership created that their consent to the introduction of a new partner was not necessary. Section 24 of the Partnership Act begins with the following words: "The interests of partners in the partnership property and the rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by the following rules:" and sub-section (7) provides: "No person may be introduced as a partner without the consent of all existing partners". The reason for this rule is set out in *Lindley on Partnership*, 11th Edition at page 447 where the learned author states: "When persons enter into a contract of partnership, their intention ordinarily is that a partnership shall exist between themselves and themselves alone. The mutual confidence reposed by each in the other is one of the main elements in the contract, and it is obvious that persons may be willing enough to trust each other, and yet be unwilling to place the same trust in anyone else". In my opinion, having regard to the ages of these two infants and taking into consideration the circumstances under which they were admitted as partners, it must necessarily be implied that their consent to the introduction of any subsequent new partner need not be obtained.

Accordingly, in my judgment the plaintiff's action must be dismissed with costs.

Action dismissed.

Solicitors: *Boswell, Hsieh & Lim; L. A. J. Smith.*

GANAPATHY CHETTIAR v. PERIAKARUPAN CHETTIAR & ANOR.

[P.C. (Lord Radcliffe, Lord Hodson and Lord Devlin)
February 14, 1962]

[Privy Council Appeal No. 13 of 1961]

Executors and Administrators — Administration — Partnership property — Court order for sale of assets — Absence of interested beneficiary — Whether a nullity — Costs against administrator "personally" set aside — R.S.C., 1957, O.55 s.5(a) and O.70.

Practice and Procedure — Irregularity of proceedings — Parties not heard — Whether wholly irregular.

Costs — Administration of estates — Appeal by administrator respondent — Prima facie acting personally.

The appellant was the administrator of the estate of his father, a partner in a money lending firm, who, at the time of his death intestate, held in trust for members of the firm (one of whom was the 1st respondent) an undivided share in certain of the partnership land. He took out an *ex parte* originating summons issued as in the estate of the deceased seeking liberty to sell the said land at a stipulated price per acre. The affidavit in support stated that the consent of the other

A partners had been obtained, but none of them had been served with the summons; nor had the summons been served on the 2nd respondent, the other son of the deceased, who had written to the registrar of the court requesting that as a beneficiary of the deceased's estate, he be served with the summons and made a party thereto. At the hearing the learned judge ruled that the 2nd respondent had no right to be served as a person whose right or interests were affected since the summons dealt in fact with a sale of partnership property, and not with the affairs of the deceased's estate. Meanwhile, unknown to the judge, the 1st respondent who wished to oppose the order for sale on the ground of inadequate price, had been refused admission to the courtroom because he was not a party to the application. The judge made the order for sale and subsequently dismissed a motion for review thereof. On appeal to the Court of Appeal the learned judge's order for sale was set aside and the appellant was ordered to pay costs personally.

C **Held:** (1) although the summons did not relate directly to the deceased's estate, since the land was partnership property, it must be treated as having been taken out in the course of administration, and the 2nd respondent was entitled as a beneficiary to be served with it since the estate was entitled to a share of the sale's proceeds and he was entitled to a share of the estate;

(2) the order for sale could not stand;

D (3) the order was not automatically void since a breach of the R.S.C. did not render proceedings void unless the court or a judge so directed; but the judge should have set aside the order on the subsequent motion for review because, on any footing, interested parties had been denied a hearing, and an order so made was wholly irregular;

E (4) the order to pay costs personally should be set aside and the appellant given liberty to apply for his costs out of the estate as proper expenses in the administration thereof.

Cases referred to:—

(1) *Craig v. Kanssen* [1943] 1 K.B. 256.

(2) *Marsh v. Marsh* [1945] A.C. 271.

The following cases were also cited in argument:
F *Lord Sudeley v. Attorney-General* [1897] A.C. 11; 13 T.L.R. 38, H.L., *In re King* [1907] 1 Ch. 72, *In the Estate of Haji Fatimah Binti Haji Abdul Samat* (1928) 6 F.M.S.L.R. 154, *In re Sethuramaswamy Chettiar* [1950] M.L.J. 300, *MacFoy v. United Africa Co. Ltd.* [1961] 3 W.L.R. 1405; [1961] 3 All E.R. 1169, *P.C. Mason v. Schupprisser* (1899) 81 L.T. 147, *Moul v. Groenings* [1891] 2 Q.B. 443; 7 T.L.R. 623, C.A., *Skinner v. Attorney-General* [1940] A.C. 350; [1939] 3 All E.R. 787, H.L., *Smurthwaite v. Hannay* [1894] A.C. 494; 10 T.L.R. 649, H.L., *Che Ah v. Che Ahmad* [1941] M.L.J. 126.

G **PRIVY COUNCIL.**

Dingle Foot Q.C. (T. O. Kellock with him) for the appellant.

Michael Mann for the respondents.

H The judgment of their Lordships was delivered by,—

Lord Radcliffe: This consolidated appeal asks for the reversal of two judgments of the Supreme Court of the Federation of Malaya in the Court of Appeal at Kuala Lumpur. The first of those judgments was given on the 6th October, 1960 and reversed an order made by I *Adams J.* in the High Court at Kuala Lumpur: the second was given on the 12th December, 1960 and dismissed a motion by the appellant to have the Court's judgment of the 6th October reviewed and varied.

The merits of the appeal can be determined upon a consideration of the first judgment. No separate reasons were given for the second and